



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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Washington, D.C. 20005

DEC 11 2007

RE: MUR 5887
Republican Main Street Partnership-PAC
and Sarah Resnick, in her official
capacity as treasurer

Dear Mr. Potter:

On December 13, 2006, the Federal Election Commission notified your clients, Republican Main Street Partnership-PAC and Sarah Resnick, in her official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on November 14, 2007, found that there is reason to believe Republican Main Street Partnership and Sarah Resnick, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(s)(2) and 434b, provisions of the Act, by making, and failing to disclose, excessive contributions to Schwarz for Congress in the form of coordinated expenditures. Furthermore, the Commission found no reason to believe that Republican Main Street Partnership-PAC and Sarah Resnick, in her official capacity as treasurer, violated 2 U.S.C. §§ 434(b)(4)(H)(iii) and 441d by failing to disclose costs associated with candidate endorsements on its website as independent expenditures and failing to report earmarked contributions. Finally, the Commission dismissed allegations that Republican Main Street Partnership-PAC and Sarah Resnick, in her official capacity as treasurer, violated 2 U.S.C. § 441d, by violating the disclaimer provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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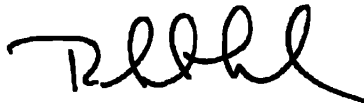
If your clients are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Robert D. Lenhard
Chairman

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

**RESPONDENTS: Republican Main Street Partnership-PAC and
Sarah Resnick, in her official capacity as treasurer**

MUR 5887

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Club for Growth. See 2 U.S.C. § 437g(a)(1). Specifically, the complaint alleges that Schwarz for Congress ("Schwarz Committee") and Republican Main Street Partnership-PAC ("RMSP-PAC") coordinated advertisements totaling \$91,300 for the benefit of the Schwarz Committee, resulting in excessive unreported contributions by RMSP-PAC to the Schwarz Committee. The complaint also alleges that RMSP-PAC broadcast advertisements that failed to include the proper disclaimers. Finally, the complaint alleges that RMSP-PAC failed to report contributions to the Schwarz Committee that were bundled through RMSP-PAC.

For the reasons discussed below, the Commission (1) found there is reason to believe that the RMSP-PAC and Sarah Resnick, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(a)(2) and 434(b) by making, and failing to disclose, excessive contributions to the Schwarz Committee in the form of coordinated expenditures; (2) dismissed the allegations that RMSP-PAC and Sarah Resnick, in her official capacity as treasurer, violated 2 U.S.C. § 441d by violating the disclaimer provisions of the Act; (3) found there is no reason to believe that RMSP-PAC and Sarah Resnick, in her official capacity as treasurer violated 2 U.S.C. § 441a(a)(8) by failing to report earmarked contributions; and (4) found there is no reason to believe that RMSP-PAC and Sarah Resnick, in her official capacity as treasurer, violated 2 U.S.C. § 434(b)(4)(H)(iii) by failing to disclose costs associated with candidate endorsements on its website as independent expenditures.

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II. ANALYSIS

A. There is Reason to Believe that RSMP-PAC May Have Coordinated Advertisements with the Schwarz Committee

The complaint alleges that at least \$91,300 in television and radio advertising reported by RMSP-PAC as independent expenditures were coordinated with the Schwarz campaign, and thus were excessive contributions from RMSP-PAC to the Schwarz Committee. The Act defines in-kind contributions as, *inter alia*, expenditures made by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committee, or their agents." 2 U.S.C. § 441a(a)(7)(B)(i). Section 109.21 of the Commission's regulations provides that a public communication is coordinated with a candidate, an authorized committee or agent thereof if it meets a three-part test: (1) payment by a person other than the candidate or his or her authorized committee; (2) satisfaction of one of three "content" standards in section 109.21(c); and (3) satisfaction of one of six "conduct" standards in section 109.21(d).¹

The complaint bases its coordination allegation on the PAC's website listing of Schwarz as a member of its Advisory Board, and a statement by the PAC that it had no staff in a "Miscellaneous Report" filed with the Commission. According to the complaint, "[i]t would therefore appear then that the PAC Advisory Board must control the PAC's activity or at a minimum provide substantial control or input in its decisions."

¹ The alleged coordinated expenditures for advertising totaled \$91,300, and \$89,500 of these expenditures occurred between July 14, 2006 and August 6, 2006 and therefore, are subject to the Commission's amended coordinated communications regulations, which became effective on July 10, 2006, *Coordinated Communications*, 71 Fed. Reg. 33190 (June 8, 2006). The U.S. District Court for the District of Columbia held in *Shays III* that the Commission's revisions of the content and conduct standards of the coordinated communications regulations at 11 C.F.R. § 109.21(c) and (d) violated the Administrative Procedures Act. However, the court did not enjoin the Commission from enforcing the regulations. *See Shays v. F.E.C.* — F.Supp.2d —, 2007 WL 2616689 (D.D.C. Sept. 12, 2007) (NO. CIV.A. 06-1247 (CKK)) (granting in part and denying in part the respective parties' motions for summary judgment). In this matter, the advertisements that were reviewed contain express advocacy under 11 C.F.R. § 109.21(c)(3), and the conduct alleged concerns substantial discussions between RMSP-PAC and the Schwarz Committee as defined in 11 C.F.R. § 109.21(d)(3). The *Shays III* court did not specifically address any deficiencies in Sections 109.21(c)(3) and 109.21(d)(3) in its decision.

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1 In response, RMSP-PAC submitted affidavits from Congressmen Fred Upton, Charles
2 Bass, and Tom Davis, the only members of the PAC Board at the relevant time, and from Sarah
3 Resnick, treasurer of RMSP-PAC.² All of the affidavits state that the PAC Board has sole
4 control and decision making authority to make contributions or disbursements on behalf of the
5 PAC, and that Schwarz was never a member of the PAC Board, but was just one of many
6 Republican Members who permitted their names to appear as PAC supporters. According to all
7 the affidavits, the PAC Board decided in early Spring 2006 to make independent expenditures in
8 Schwarz's primary race after Club for Growth announced it would challenge Schwarz in that
9 election. Thereafter, Congressman Upton took the lead in producing advertisements featuring
10 Schwarz, with Congressman Davis, but not Congressman Bass, also having involvement. In
11 their affidavits, all of the Congressmen state that they had general political conversations with
12 Schwarz, but did not discuss the PAC's expenditures with him, and Resnick also avers that she
13 did not discuss this topic with Schwarz or his Congressional or campaign staff. Moreover, the
14 affiants state, with slight variations, that Schwarz never attended a PAC Board meeting where
15 the expenditures were discussed; to the best of their knowledge, no one at the PAC asked
16 Schwarz or his staff for input in its decision making or allocation of its funds; the advertisements
17 were not produced at the request of Schwarz or his campaign; no one from Schwarz's campaign
18 was involved in the creation, production, or distribution of the advertisements; the information in
19 the advertisements was publicly available; and was not provided to the PAC or its vendors by
20 Schwarz or his campaign.

² Of the four affidavits submitted by RMSP-PAC, only Congressman Upton's affidavit is notarized.

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1 While RMSP-PAC's response to the complaint does not completely foreclose the
2 possibility of coordination between the Schwarz campaign and RSMP-PAC³, it is sufficiently
3 thorough to rebut the initial basis for the allegation in the complaint, namely that coordination
4 can be inferred from Schwarz's position on the PAC's Advisory Board. The complainant filed a
5 supplement to the complaint, however, providing excerpts from a 2007 book entitled *Freshman*
6 *Orientation: House Style and Home Style*, to further support the coordination allegations. The
7 book's author claims that he interviewed Matt Marsden, campaign manager for Schwarz's 2006
8 primary election, after Schwarz lost the election, and quotes Marsden as stating during the
9 interview that:

10 Main Street did not deliver as they promised they would. They promised to do
11 television ads to counter Club for Growth's early ads, and I hounded them to get
12 their pro-Schwarz stuff on the air, and they kept telling me, its on its way. Yeah,
13 well, when it arrived, more than a month after they promised, it was too little too
14 late....

15
16 See Attachment to the Supplement to the Complaint (ellipses in the original). In the book's
17 preface, *see id*, the author states that while meeting with Congressman Schwarz or his staff,
18 "I always carried a microcassette recorder equipped with an internal microphone, along with a
19 ready supply of batteries and unused tapes. I recorded my own observations as well as answers
20 to questions I posed to those involved in the events of the moment." Thus, the author may have a
21 recording of his interview with Marsden.⁴

22 The advertisements reported by RSMP-PAC as independent expenditures met the payment
23 and content prongs of the coordinated communications regulations because RMSP-PAC spent

³ For example, the affidavits do not foreclose the possibility that a member of Schwarz's staff may have contacted PAC staff and had substantial discussions concerning the substance or timing of the advertisements.

⁴ Edward Sidlow, author of *Freshman Orientation: Home Style and House Style*, is a professor of political science at Eastern Michigan University. He also authored *Challenging the Incumbent: An Underdog's Undertaking*, a book on congressional campaigns, and has published numerous articles.

1 \$91,300 on advertisements on behalf of the Schwarz campaign and the advertisements expressly
2 advocated the election of Congressman Schwarz or the defeat of Tim Walberg, his opponent.
3 See 11 C.F.R. §§ 109.21(a) and (c)(3).

4 With respect to the conduct standard for coordination, Marsden's reported use of the term
5 "hounded" and the phrase "they kept telling me" suggest that he had more than one conversation
6 with RMSP-PAC. His reported communications with RSMP-PAC also suggest that he may have
7 conveyed the campaign's "plans, projects, activities and needs" (e.g., put pro-Schwarz television
8 ads on the air to counter Club for Growth's ads) to RMSP-PAC and this information may have
9 been material to the creation (e.g., substance of the ads) and the distribution (e.g., the timing) of
10 RMPS-PAC's ads. See 11 C.F.R. § 109.21(d)(3). Further, Marsden's reported discussions with
11 RMSP-PAC raise questions regarding who initiated the contact between Marsden and RMSP-PAC,
12 when the contact was initiated, and what promises the RMSP-PAC may have made to the Schwarz
13 campaign.

14 RMSP-PAC states in its response to the supplement that the PAC's previous response to the
15 original complaint "covers the issues addressed by the CFG in this amended complaint. The CFG
16 amended complaint does not add anything to this case. As explained in the response previously
17 submitted, none of the members of the PAC Board coordinated PAC expenditures with
18 Congressman Schwarz or his staff." However, RSMP-PAC's original response did not specifically
19 address the issue of alleged conversations that Marsden had with someone at the PAC. In RMSP-
20 PAC's original response, each affiant states either "to the "extent" of their knowledge or the "best"
21 of their knowledge, there was no contact with Congressman Schwarz or his staff with respect to the
22 advertisements. That may have been the case at the time of the affidavits. However, with the filing
23 of the supplemental complaint, there is a new, specific allegation; if the book's excerpts are

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1 accurate, Marsden must have spoken to someone at RMSP-PAC about the advertisements, but the
2 PAC's response to the supplemental complaint does not specifically confirm or deny that it sought
3 to determine who that person might be, or if located, what that person said about the timing and
4 substance of any conversations. Thus, there is nothing in the RSMP-PAC's responses and affidavits
5 that specifically rebut Mr. Marsden's reported statements, and RMSP-PAC has not specifically
6 denied them after receiving the supplement to the complaint.

7 Therefore, there is reason to believe that Republican Main Street Partnership-PAC and
8 Sarah Resnick, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(a)(2) and 434(b)
9 by making, and failing to disclose, excessive contributions to the Schwarz Committee in the form
10 of coordinated expenditures.

11 **B. RMSP-PAC Complied or Substantially Complied with the Disclaimer**
12 **Provisions of the Act**
13

14 The complaint alleges that RMSP-PAC broadcast a radio advertisement for the benefit of
15 the Schwarz Committee, attached as Exhibit G in the complaint, that failed to state that RMSP-
16 PAC was responsible for its content, failed to include the name and permanent street address,
17 telephone number or World Wide Web address of the person who paid for the communication,
18 and failed to state that the communication was not authorized by any candidate or candidate's
19 committee. In an affidavit included with its Response, Sarah Resnick, RMSP-PAC's treasurer,
20 avers that the complaint refers to a recorded advertisement that she placed on the PAC's website,
21 but that was never broadcast on any radio station. According to Ms. Resnick, "the website
22 included a written disclaimer explaining that the PAC paid for the ad," and the PAC's contact
23 information was available on its website. However, the PAC's response did not state whether its
24 website included a statement that it was not authorized by any candidate or candidate's
25 committee.

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1 In its Response, RMSP-PAC also states that the specific disclaimers required for radio
2 advertisements do not apply to the advertisement in question since it was not broadcast on the
3 radio, but only appeared on its website. According to RMSP-PAC, the advertisement therefore
4 only had to meet the general content requirements for disclaimers set forth at 11 C.F.R.

5 § 110.11(b)(3), which apply to Internet websites of political committees available to the general
6 public.

7 The communication in issue here is a recorded communication that never ran on the
8 radio, but was available only on the PAC's website. See Statement of Reasons in MUR 5526
9 (Graf for Congress) (FECA establishes additional disclaimer requirements on a medium-by-
10 medium basis for four categories of communications, but it does not follow that every
11 medium contemplated in Section 441d(a) fits into one of these categories). Each and every
12 communication made by the political committee on its own website does not require a separate
13 and distinct disclaimer. Instead, the website itself must present a disclaimer in a clear and
14 conspicuous manner. 11 C.F.R. § 110.11(c)(1). A political committee website containing a
15 single disclaimer meeting the general content requirements of 11 C.F.R. § 110.11(b)(3) may
16 satisfy the committee's obligations under 2 U.S.C. § 441d. Consequently, the communication at
17 issue here did not need to meet the additional specific requirements for disclaimers in radio
18 communications if the disclaimer on the website itself already satisfied the general content
19 requirements for all disclaimers, including a statement that it was not authorized by any
20 candidate or candidate's committee.

21 We were not able to access a 2006 version of the RMSP-PAC website that contains the
22 communication at issue. Therefore, we do not know what disclaimers were then on the RMSP-
23 PAC's website. Because we do not have information indicating that RMSP-PAC's website

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1 contained a disclaimer that included the general content requirements at that time, the
2 Commission dismisses the allegations that Republican Main Street Partnership-PAC and Sarah
3 Resnick, in her official capacity as treasurer, violated 2 U.S.C. § 441d in connection with the
4 recorded advertisement that was placed on its website.

5 The complaint also alleges that a US Newswire release, attached as Exhibit G to the
6 complaint, did not include the required disclaimers. In its Response, RMSP-PAC states that it
7 did not distribute this article. In her affidavit, treasurer Sarah Resnick avers that the release
8 "appears to have been pulled from the PAC's website by a reporter and distributed as a news
9 article," and that "[n]o one from the PAC was involved in distributing this article through U.S.
10 Newswire." There is no information to the contrary. Because the article appears on the website
11 of the U.S. Newswire, it likely that U.S. Newswire took the information from the RMSP-PAC
12 website. However, Ms. Resnick also avers that "[w]hen the information was on the PAC's
13 website, it included proper disclaimers." Ms. Resnick appears to be alluding to a website press
14 release dated August 4, 2006, which has much of the identical language as the US Newswire
15 article. While the other required information appears elsewhere on the website, the press release
16 does not contain an authorization statement. However, since the focus of the complaint is on the
17 U.S. Newswire article, not the PAC's website release, and the costs of the website release were
18 likely *de minimis*, the Commission dismisses the allegations in the complaint relating to this
19 press release.

20 Finally, the complaint alleges that RMSP-PAC broadcast a television advertisement for
21 the benefit of the Schwarz Committee, attached as Exhibit C to the complaint, that fails to
22 include a written statement that RMSP-PAC is responsible for the contents of the advertising at
23 the end of the advertisement; there is an audio statement to this effect at the beginning of the

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advertisement. In its Response, RMSP-PAC states that the television advertisement contained all the required disclaimers because the statute does not require a written disclaimer to appear at the end of the communication. While the Act does not require a written disclaimer at the end of television advertisements, the Commission's regulations do. The Act provides that a communication paid by other persons that is transmitted through television should include, in a clearly spoken manner, an audio statement identifying who is responsible for the content of the communication. 2 U.S.C. § 441d(d)(2). The Commission's regulations provide that a communication transmitted through television must also include such a statement in clearly readable writing at the end of the communication. See 11 C.F.R. 110.11(c)(4)(iii). Nevertheless, the advertisement states audibly at the beginning that RMSP-PAC "is responsible for the contents of this advertisement," so viewers would be apprised of this information. See ADR 347/MUR 5727 (Kaloogian/Roach), MUR 5629 (Newberry) and MUR 5834 (Darcy Burner for Congress). Therefore, the Commission dismisses the allegation that Republican Main Street Partnership PAC, and Sarah Resnick, in her official capacity, violated 2 U.S.C. § 441d with respect to this advertisement.

C. There is No Reason to Believe RMSP-PAC Violated the Provisions of the Act Relating to the Bundling or Earmarking of Contributions or the Reporting of Independent Expenditures

The complaint alleges that RMSP-PAC failed to file conduit reports of contributions to the Schwarz campaign bundled through the PAC. As support, the complaint attaches as Exhibit H an article from the *The Hill* newspaper reprinted on the RMSP-PAC website stating that the PAC raised \$100,000 for various candidates, including Joe Schwarz. The complaint also attaches as Exhibit I other pages from the PAC's website to show that RMSP-PAC solicited donations for the Schwarz campaign; the pages include a statement that the PAC "support[s] our

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1 endorsed candidates by collecting contributions from individuals like you...and passing them
2 along directly to candidates" (ellipses in original), and part of the PAC's endorsement of Joe
3 Schwarz. The complaint further alleges that if the solicitations were independent expenditures,
4 RMSP-PAC has not reported any costs for them.

5 The Act requires that all contributions made by a person, either directly or indirectly, on
6 behalf of a particular candidate, including contributions that are in any way earmarked or
7 otherwise directed through an intermediary or conduit to such candidate, be treated as
8 contributions from such person to such candidate, and the conduit or intermediary must report
9 such earmarked contributions. See 2 U.S.C. § 441a(a)(8); see also 11 C.F.R. § 110.6(c)(2)
10 (recipient committee must report each conduit or intermediary who forwards earmarked
11 contributions that aggregate more than \$200 in any calendar year).

12 In its Response, RMSP-PAC states that it did not act as a conduit for any contributions to
13 the Schwarz campaign and thus was not required to file any reports of such contributions. In her
14 affidavit, Ms. Resnick states that the PAC held a fundraising event for Schwarz and several other
15 Members of Congress, but avers "[t]o the best of my knowledge," all the money raised was given
16 directly to the candidates or their campaign agents by the contributors," and "PAC members
17 were instructed not to touch the checks." In addition, Ms. Resnick states that RMSP-PAC's
18 website has no mechanism for individuals to contribute directly to candidates or to earmark
19 contributions to particular candidates, and the PAC has never received any candidate
20 contributions through the Internet.

21 RMSP's website contains endorsements of nine 2006 candidates. At the end of each
22 endorsement, the following appears: "To make a contribution to support [candidate's name's]
23 election bid, CLICK HERE." Clicking in the designated place brings up a page that only permits

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1 contributions to RSMP-PAC. Although the wording accompanying this mechanism and the
2 website language quoted in the complaint might lead a reader to believe that the PAC bundles
3 contributions, Ms. Resnick's affidavit states that RSMP-PAC never bundled any contributions to
4 Congressman Schwarz. There is no information to the contrary. Therefore, there is no reason to
5 believe that Republican Main Street Partnership PAC and Sarah Resnick, in her official capacity
6 as treasurer, violated 2 U.S.C. § 441a(a)(8) by failing to report earmarked contributions.

7 With regard to RMSP-PAC's alleged failure to report the costs associated with the
8 candidate endorsements on its website as independent expenditures, there is no information that
9 those costs might be above \$200.⁵ Therefore, there is no reason to believe that RMSP-PAC and
10 Sarah Resnick, in her capacity as treasurer, violated 2 U.S.C. § 434(b)(4)(H)(iii).

11

⁵ In Advisory Opinion 1999-37 (X-PAC), the Commission gave guidance regarding a situation where there are costs in connection with independent expenditures for advertising that appear on a political committee's own website. According to the Commission, such costs would need to be reported and itemized if such expenses exceed \$200. See 2 U.S.C. § 434(b)(6)(B)(iii). In MUR 5491 (Jerry Falwell Ministries, Inc.), which involved corporate expenditures for Internet communications, the Commission dismissed the matter where the funds expended for Internet-based communications were likely *de minimis*. See Statement of Reasons in MUR 5491. See also *E&J for Internet Communications* at 18594 ("the cost of placing a particular piece of political commentary on the Web is generally insignificant. The cost of such activity is often only the time and energy that is devoted by an individual to share his or her views and opinions with the rest of the Internet community.").